SENATE RECORD VOTE ANALYSIS

105th Congress — September 14, 1998, 5:35 p.m.
2nd Session — **Vote No. 266** — Page S-10309 Temp. Record

LABOR UNION "SALTING"/Cloture, motion to proceed

SUBJECT: **Truth in Employment Act . . . S. 1981. Sessions motion to close debate on the motion to proceed.**

ACTION: CLOTURE MOTION REJECTED, 52-42

SYNOPSIS: As introduced, S. 1981, the Truth in Employment Act, will amend the National Labor Relations Act to provide: that an employer is not required to hire an individual who is not a bona fide applicant (a bona fide applicant is someone who seeks employment with the "primary purpose" of furthering the interests of that employer and not of some second employer or agent); and that any employee who is a bona fide applicant continues to have all the rights that are provided by law. (The bill is identical to title I of H.R. 3246 as it passed the House.) Nothing in the bill will affect the "rights and responsibilities of any employee who is or was a bona fide employee applicant, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid protection."

On September 10, 1998, Senator Sessions moved to proceed to S. 1981. Senator Durbin objected. Senator Sessions then sent to the desk, for himself and others, a motion to close debate on the motion to proceed.

NOTE: A three-fifths majority (60) vote of the Senate is required to invoke cloture.

Those favoring the motion to invoke cloture contended:

Labor unions are becoming an anachronism in America. Only a small and aging fraction of the workforce now belongs to unions, and that fraction is steadily declining. People are satisfied with the terms of their employment, they have extensive legal protections, and in many businesses employees are actively involved in management decisions and are encouraged to own stock in their companies, thereby making them, to an extent, their own bosses. Most Americans do not have union representation because they neither need nor want it. Labor unions are acutely aware of their declining relevancy and they are desperate to reverse their fortunes.

(See other side)

YEAS (52)

Republicans (52 or 98%)		Democrats (0 or 0%)
Abraham	Hutchinson	
Allard	Hutchison	
Ashcroft	Inhofe	
Bennett	Jeffords	
Bond	Kempthorne	
Brownback	Kyl	
Burns	Lott	
Chafee	Lugar	
Coats	Mack	
Cochran	McCain	
Collins	McConnell	
Coverdell	Murkowski	
Craig	Nickles	
DeWine	Roberts	
Domenici	Roth	
Enzi	Santorum	
Faircloth	Sessions	
Frist	Shelby	
Gorton	Smith, Bob	
Gramm	Smith, Gordon	
Grams	Snowe	
Grassley	Stevens	
Gregg	Thomas	
Hagel	Thompson	
Hatch	Thurmond	
Helms	Warner	

NAYS (42)

Republicans (1 or 2%)	Democrats (41 or 100%)	
Campbell	Akaka	Inouye
	Baucus	Johnson
	Biden	Kennedy
	Bingaman	Kerrey
	Boxer	Kerry
	Breaux	Kohl
	Bryan	Landrieu
	Bumpers	Lautenberg
	Byrd	Leahy
	Cleland	Levin
	Conrad	Lieberman
	Daschle	Moynihan
	Dodd	Murray
	Dorgan	Reed
	Durbin	Reid
	Feingold	Robb
	Feinstein	Rockefeller
	Ford	Sarbanes
	Glenn	Wellstone
	Graham	Wyden
	Harkin	

NOT VOTING (6)

Republicans (2)	Democrats (4)
D'Amato-[2]	Hollings-[2]
Specter-[2]	Mikulski-[2]
	Moseley-Braun-[2]
	Torricelli-[2]

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Rather than trying to adjust to modern workplace realities, though, they have increasingly used ugly, disreputable, and often illegal tactics that have only further tarnished their reputation with the public. In particular, they have used the practice of "salting" to destroy businesses whose employees do not want to join unions.

"Salting" refers to the practice of having union members apply for work at companies that are not unionized or that are just partially unionized. Until recently the practice was not common, and when it occurred it generally was to try to get one or more union members into a company for the purpose of encouraging the other workers to organize. In the "Jungle" days of Upton Sinclair, "salts" could find abused workers who were eager to join unions. Now, though, that purpose rarely applies. Workers are very satisfied with their jobs and they are treated well--salts who gain employment cannot find new recruits.

Nevertheless, the practice of salting has increased because it is no longer intended to organize workers. Instead, its purpose is to destroy non-union businesses or to force them to replace their existing workforces with union labor. The International Brotherhood of Electrical Workers (IBEW) has put out a training manual that sums it up as follows: "The goal [of salting is to] threaten or actually apply the economic pressure necessary to cause the employer to . . . raise his prices to recoup additional costs, scale back his business activities, leave the union's jurisdiction, and go out of business." (That same manual then goes on with detailed instructions for their salts on how to lie on a job application in order to get hired; COMET, the AFL-CIO's salting manual, goes into great detail on how to sabotage a business.) Once on the job, a salt begins sabotaging the company by causing workplace disruptions, by making a battery of frivolous charges to the Equal Employment Opportunity Commission and the National Labor Relations Board, and by creating Occupational Safety and Health Administration (OSHA) violations and then reporting them to OSHA. Employers who try to fire them face yet another litany of false charges. When these cases go to court the charges are almost always dismissed. However, the salts are not trying to get convictions; they are trying to impose costs, and in that effort they succeed. For instance, Gaylor Electric in Carmel, Indiana, had 96 charges filed against it by salts, and the courts dismissed all 96 charges. However, the company's legal bills for defending itself added up to $250,000. Many companies are advised by their lawyers to pay off on claims because it is more expensive to fight in court.

For the unions there is not any cost, because the United States taxpayers, through the National Labor Relations Board (NLRB), are legally obligated to pay the costs of representing the salts. In 1997, there were 17,000 complaints filed with the NLRB. Of that number, 2,509 were investigated and litigated at an average cost to the taxpayers of $17,500. Also, 174 of those cases were appealed, at an average cost of $42,700. We do not believe that it is right to make the American taxpayers pay for unions' abuse of the legal system to destroy legitimate businesses. Therefore, we have proposed this bill, which will make clear that business owners do not have to hire employees whose purpose is to destroy their businesses. The effect of this provision will be to stop the NLRB from pursuing cases in court that are brought by union salts.

Opposition to this bill rests upon two patently false claims. The first claim is that unions engage in salting to organize workers at companies. However, the activities of the salts, and even the training manuals of the unions themselves, prove that this claim is false. The second claim is that this bill will inhibit workers from trying to form unions. However, the bill expressly forbids any restrictions on union organizing. Any workers who wish to join together in a union will still be allowed to organize. The problem for the unions, and for our dinosaur liberal colleagues, is that most Americans do not wish to join unions. The proper response to that fact is not to make the taxpayers subsidize an abuse of the legal system in order to destroy the employers of those workers. Senators who agree should join us in supporting cloture.

Those opposing the motion to invoke cloture contended:

This bill is just one more in a series of assaults by our Republican colleagues on working men and women of America. They have tried to repeal the Davis-Bacon Act, they oppose increasing the minimum wage, they want to cut back on OSHA regulations, they want to weaken overtime laws, and they want to bypass unions with worker-management teams. Today they have come up with a new way of weakening the rights of workers--they want it to be possible to reject workers based on their motivation for wanting to work. This proposal is unjust. Employees should be hired based on their abilities and how they perform their jobs, and they should be judged on that basis. It is irrelevant if an employee has a primary purpose other than performing that job, as long as the job gets done. Under this bill, though, it will be perfectly legal to deny employment to people whose primary purpose is union organizing, or attempting to organize a daycare, or advancing minority rights, or pursuing any other goal that is more important to them then working. The particular practice that is being targeted, salting, has been upheld by the Supreme Court in a unanimous decision. The purpose of salting is not to engage in illegal activities, but to organize workers to defend their rights. If the purpose were to engage in illegal activities, employers already have ample protections. They can fire people for sabotage, or for failing to perform their assigned duties, or for engaging in any of the other activities that some Senators have alleged are common. The balance of power is already greatly tilted in favor of corporate America. We will not make it worse. We oppose cloture.